

**REGULAR STATE BANKING BOARD MEETING
HELD BY CONFERENCE CALL
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

September 17, 2003

The regular meeting of the State Banking Board was held in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota. Chairman Karsky called the meeting to order at 9:05 a.m., Thursday, September 17, 2003, by conference call.

MEMBERS PRESENT: Timothy J. Karsky, Chairman (*Office*)
Ron Braseth, Member (*Mayville*)
Launa Moldenhauer, Member (*Office*)
Roger Monson, Member (*Finley*)
Gary Petersen, Member (*New Town*)
Terry Zeltinger, Member (*Minot*)

MEMBER ABSENT: Bill Daniel, Member

ALSO PRESENT: Robert J. Entringer, Assistant Commissioner (*Office*)
Jeff Jungman, Chief Examiner – Banks (*Office*)
Scott Miller, Assistant Attorney General (*Office*)
Rod Jordahl (*Fargo*)

APPROVAL OF MINUTES

Chairman Karsky indicated the Board received copies of the minutes of the regular meeting held on July 10, 2003, and the special meetings held on July 31, 2003, second meeting of July 31, 2003, and September 10, 2003. **It was moved by Member Braseth, seconded by Member Petersen, and unanimously carried, with Members Daniel and Moldenhauer absent, to approve the minutes as published.**

STATE BANK & TRUST, FARGO – APPLICATION TO EXERCISE TRUST POWERS

Assistant Commissioner Entringer reviewed his September 12, 2003, Memorandum, which indicates the application by State Bank & Trust to exercise trust powers was received on July 16, 2003, and was published in *The Forum* on August 11 and 18, 2003. Direct notice was also sent to 37 area banks and facilities, and no comments have been received nor have there been any requests for copies of the application.

Assistant Commissioner Entringer reviewed the statutory criteria, which included Sections 6-03-02(12) and 6-05-01, North Dakota Century Code, and Section 13-02-16-03 of the North Dakota Administrative Code. As noted in the application, the bank has asked for permission to exercise full trust powers effective January 1, 2004, when all of the trust operations of the affiliated Northern Capital Trust Co., Fargo, will be acquired and merged into the bank. The application indicates the Board has already adopted the Statement of Principles of Trust Department Management as required by the FDIC and this Department. Also, the applicant indicates the policies and procedures in place at Northern Capital Trust Co. will be adopted effective January 1, 2004, and the trust committee of Northern Capital Trust Co. will be expanded to include officers and/or directors of the bank. The primary trust officer for the applicant will be Dick Brudvig who has extensive trust experience with Northern Capital Trust Co., as well as previous trust experience, and is a graduate of ABA's National Trust School.

Assistant Commissioner Entringer stated the statutory items requiring compliance include: (1) That the applicant has at least \$100,000 of capital stock; the applicant currently has \$600,000 in capital stock. (2) A surety deposit is required; Northern Capital Trust Co. currently has a surety deposit at the Bank of North Dakota and it is anticipated after the merger, this surety deposit will be maintained. (3) The statute requires the corporation to deliver to the Commissioner or a designated agent the securities described in statute and to deliver a certificate of such deposit. (4) The trust officers and committee members must have experience commensurate with the trust powers being requested.

Assistant Commissioner Entringer indicated the applicant is in compliance with all sections that can be complied with at this point, and compliance with the additional items will be as outlined in the proposed Order.

Chairman Karsky asked Mr. Jordahl to discuss the bank's plans regarding the application. Mr. Jordahl indicated between now and January 1, 2004, State Bank & Trust is referring potential trust customers to Northern Capital Trust Co., with a full disclosure of the anticipated merger on January 1, 2004. Mr. Jordahl indicated currently they are preparing the application for the merger of Northern Capital Trust Co., with and into State Bank & Trust, and when the merger is completed the bank will provide the current full range of trust services offered at the present time by Northern Capital Trust Co.

Assistant Commissioner Entringer indicated Northern Capital Trust Co. had been examined by the Department approximately one year ago and the examination results indicated satisfactory condition. Assistant Commissioner Entringer stated all of the current employees of Northern Capital Trust Co. have and/or will cross over with the proposed merger, adding that the Department has always been impressed with the staff of Northern Capital Trust Co.

Assistant Commissioner Entringer stated based on the statutory requirements, the Department believes the applicant has met the capital stock requirements, will be able to comply with the surety deposit requirement, and the members of the trust committee and officers have the appropriate experience. Therefore, it is the Department's recommendation to approve the application by State Bank & Trust, Fargo, for trust powers.

Assistant Commissioner Entringer indicated based on a July 18, 2003, letter from the Federal Deposit Insurance Corporation, the application for full trust powers is deemed approved on August 15, 2003, unless the bank is informed in writing that the FDIC has removed the application from expedited processing. Mr. Jordahl indicated that was accurate and that the bank had not received any information that the application had been removed; therefore the bank has received FDIC approval for trust powers.

Mr. Jordahl indicated the State of Minnesota required the bank register with the State and pledge a surety deposit, and that both of these steps have been accomplished. Therefore, the bank will be able to exercise fiduciary activities in Minnesota.

Chairman Karsky inquired as to where the trust company is located, and Mr. Jordahl indicated the address is 201 North 10th Street, Fargo. Chairman Karsky asked if there would be any deposits taken at that location, and Mr. Jordahl

indicated it would strictly be the trust and asset management services, which is currently being provided there now.

It was moved by Member Monson to approve the application by State Bank & Trust, Fargo, to exercise trust powers, and to authorize Chairman Karsky to sign the Order on behalf of the State Banking Board. The motion was seconded by Member Petersen and carried by a vote of 5 to 0, with Members Daniel and Moldenhauer absent.

Rod Jordahl left the meeting at 9:16 a.m.

Member Moldenhauer joined the meeting at 9:16 a.m.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER – DAKOTA COMMUNITY BANK, HEBRON, APPLICATION TO ESTABLISH A FACILITY IN BOWMAN

Chairman Karsky indicated the proposed Findings of Fact, Conclusions of Law, and Order had been drafted by Marilyn Foss and reviewed by Assistant Attorney General Miller, and meets the Department's requirements. Chairman Karsky indicated unless there are questions, he would entertain a motion.

It was moved by Member Moldenhauer, seconded by Member Monson to approve the Findings of Fact, Conclusions of Law, and Order, and carried by a vote of 6 to 0, with Member Daniel absent.

ITEMS TO BE NOTED

Comptroller of the Currency

Effective 7-1-03, U.S. Bank National Association, Cincinnati, OH, to merge into U.S. Bank National Association ND, Fargo, ND.

Received 7-1-03, Community First National Bank, Fargo, to close branch office at 2986 Jamacha Road, El Cajon, CA.

Received 7-29-03, Wells Fargo Bank North Dakota, NA, Fargo, to merge into Wells Fargo Bank, NA, San Francisco, CA.

Effective 8-29-03, Community National Bank of Grand Forks, Grand Forks, to merge into Rural American Bank-East Grand Forks, East Grand Forks, Minnesota, with name change to Community Bank of the Red River Valley, East Grand Forks, Minnesota.

ADMINISTRATIVE RULE FOR PRIVACY STATUTE

Chairman Karsky indicated he and Assistant Attorney General Miller will meet with Marilyn Foss, General Counsel for the North Dakota Bankers Association, to draft proposed privacy rules, which will be provided to the Board at its next meeting. Assistant Attorney General Miller indicated he is unclear as to what the Legislature has asked the Board to do in this rulemaking process and that hopefully Ms. Foss will have some insight in that regard.

FIRST SOUTHWEST BANK, BISMARCK – TO INVEST IN A WHOLLY-OWNED SUBSIDIARY

Assistant Commissioner Entringer referred the Board to a letter that he had faxed today regarding a request by legal counsel for First Southwest Bank, Bismarck, to invest in a wholly-owned subsidiary. The sole purpose of the subsidiary would be to own a motel property upon which the bank would be foreclosing and would receive title to on September 18, 2003. The reason for the request is to move the property into the wholly-owned subsidiary so that the bank may continue to operate the property and insulate the bank's depositors from potential liabilities in connection with the bank's operation in the motel. Mr. Lervick in his letter stated his reading of Section 6-03-39 of the North Dakota Century Code indicates it would appear the purpose of this statute is to protect the interest of the bank's depositors and, by forming a limited liability company to operate the motel until it was sold, the bank would insulate its depositors from liability connected with the motel's operation. Mr. Lervick's letter also refers to information that was previously faxed to the Department concerning operating subsidiaries and DPC subsidiaries, both of which are permitted by the Office of the Comptroller of the Currency with respect to national banks. According to Mr. Lervick's letter and research, he indicates the OCC has specifically permitted operating subsidiaries of national banks to manage and dispose of real property taken by the banks through foreclosure.

Assistant Commissioner Entringer referred to Section 6-03-38, North Dakota Century Code, which authorizes banks to invest in subsidiary organizations when the activities of such organizations are incidental or complimentary to the bank's activities, with the specific approval of the State Banking Board for each such subsidiary. Member Petersen added that Section also allows the Board to authorize a bank to engage in activities allowed if they were a national bank. Assistant Commissioner Entringer stated that is correct; however, the statute went on to say notwithstanding any restriction elsewhere contained in the Code. Because of the specific authorization was contained within the same Section, Assistant Commissioner Entringer stated that is what he was asking Assistant Attorney General Miller to reconcile. Assistant Attorney General Miller indicated notwithstanding means regardless of, rather than the way Assistant Commissioner Entringer was interpreting it.

Chairman Karsky indicated we could act on the request; however, Assistant Attorney General Miller stated he has not had time to review the information to ensure that it is in fact authorized by the Comptroller of the Currency. Chairman Karsky indicated this issue will be considered at a special State Banking Board meeting.

FARM CREDIT SERVICES FOCUS ARTICLE

Chairman Karsky asked if the Board had reviewed the article, indicating it sounds as though Farm Credit Services is offering deposit accounts, and paying interest on deposit accounts which appear to be linked to a money market account. Chairman Karsky indicated it appears to him Farm Credit Services is engaged in the business of banking and asked if the Board wanted him to pursue this. It was the Board's consensus that Chairman Karsky should pursue this.

Member Zeltinger left the conference call at 9:34 a.m., and the Board went into closed session at 9:37 a.m.

Timothy J. Karsky, Chairman

Robert J. Entringer, Secretary